IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS LUFKIN DIVISION

RUBEN GUERRERO §

v. § CIVIL ACTION NO. 9:11cv82

TY N. TURNER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND DENYING PLAINTIFF'S MOTION FOR REHEARING

The Plaintiff Ruben Guerrero, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Guerrero complained of an incident in which he did not turn out for work because he was having "psychological issues," and Officer Turner threatened to shoot him. He subsequently received a disciplinary case for attempted escape. After an evidentiary hearing, the lawsuit was dismissed on March 7, 2012.

Guerrero filed a motion for rehearing, which the Magistrate Judge construed as a motion to alter or amend the judgment, on March 23, 2012. On March 26, 2012, the Magistrate Judge issued a Report recommending that the motion be denied. Guerrero did not file objections to this Report; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the Plaintiff's motion to alter or amend the judgment, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. *See* <u>United States v. Wilson</u>, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Report of the Magistrate Judge dated March 26, 2012 (docket no. 22) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion for rehearing, construed as a motion to alter or amend the judgment under Rule 59(e), Fed. R. Civ. P., is hereby DENIED.

So ORDERED and SIGNED this 1 day of June, 2012.

Ron Clark, United States District Judge

Rm Clark